



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE
International Trade Administration
[A-570-831]

Fresh Garlic from the People's Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On October 20, 2011, the Department of Commerce (Department) published partial preliminary results of the 2009-2010 administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) covering the two mandatory respondents and five separate rate respondents for the period of review (POR) of November 1, 2009, through October 31, 2010.¹ Based on the analysis of the comments received and factual records, the Department has made certain changes to the margin calculations for two fully participating mandatory respondents. The changes to the calculations, in turn, results in the changes to the separate rate calculated for the five additional producers/exporters which demonstrated eligibility for separate rate status. The final dumping margins are listed in the "Final Results of Review" section below.

EFFECTIVE DATE: [Insert date of publication in the Federal Register]

FOR FURTHER INFORMATION CONTACT: Lingjun Wang, David Lindgren and Nicholas Czajkowski, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2316, (202) 482-3870 and (202) 482-1395, respectively.

¹ The Department published the partial final results and partial rescission of this review on February 27, 2012. Those partial final results covered the PRC-wide entity and the partial rescission covered the producers/exporters who certified no sales, exports or entries. See Fresh Garlic From the People's Republic of China: Partial Final Results and Partial Final Rescission of the 2009-2010 Administrative Review, 77 FR 11486 (February 27, 2012) .

SUPPLEMENTARY INFORMATION:

Background

The Department initiated this review for 113 producers/exporters. On December 7, 2011, the Department published partial preliminary results of this administrative review which covered the two fully participating mandatory respondents, Shenzhen Xinboda Industrial Co., Ltd. (Xinboda) and Hebei Golden Bird Trading Co., Ltd. (Golden Bird), and five producers/exporters who certified or applied for separate rate status. We invited parties to comment on the partial preliminary results.² Since the Preliminary Results, the following events have occurred:

On December 20, 2011, in response to Xinboda's and Golden Bird's requests, the Department extended the deadline for parties to file post-preliminary surrogate value information. On January 6, 2012, Xinboda, Golden Bird, and Petitioners³ each timely filed publicly available surrogate value information and comments.

On January 13, 2012, in response to Petitioners' request, the Department extended the deadline for parties to submit factual information to rebut, clarify, or correct the January 6, 2012 submissions. On January 23, 2012, Golden Bird and submitted factual information to rebut, clarify, or correct information in the January 6, 2012 surrogate value submissions. On January 30, 2012, Xinboda argued that the Petitioners' January 23, 2012 submission contained new, untimely filed, surrogate value information. On February 7, 2012, Petitioners rebutted Xinboda's argument by stating that their January 23, 2012 rebuttal, including the portion disputed by Xinboda, responded to surrogate value information in Xinboda's January 6, 2012 submission. On February

² See Fresh Garlic From the People's Republic of China: Preliminary Results of the 2009-2010 Antidumping Duty Administrative Review, 76 FR 76375 (December 7, 2011) (Preliminary Results).

³ Petitioners are the Fresh Garlic Producers Association, its individual members being Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

10, 2012, Xinboda filed a letter arguing that it is not the Department's policy to accept alternative surrogate value information as rebuttal information. After carefully considering both parties' arguments, on March 7, 2012, the Department issued a memorandum to accept Petitioners' January 23, 2012 rebuttal submission as timely rebuttal information pursuant to 19 CFR 351.301(c)(1) and not use the information as surrogate value information.⁴

On March 26, 2012, the Department extended the time limit for completing the final results of this review from 120 days to 180 days.⁵ On April 20, 2012, Petitioners, Xinboda and Jinan Farmlady Trading Co., Ltd. (Farmlady) each timely filed case briefs. On April 24, 2012, the Department rejected Golden Bird's untimely filed case brief. Subsequently, the Department determined that Xinboda's case brief contained untimely filed new factual information, and requested that Xinboda submit a redacted case brief. Xinboda timely submitted its redacted case brief on May 1, 2012. Rebuttal briefs were timely submitted by Xinboda, Golden Bird and Petitioners by May 2, 2012. Finally, on May 9, 2012, the Department determined that Xinboda's rebuttal brief contained arguments which did not respond to arguments raised in other parties' case briefs and requested that Xinboda submit a redacted case brief. Xinboda timely submitted its redacted case brief on May 11, 2012.

At the request of Xinboda, a public hearing was held on May 16, 2012 in accordance with 19 CFR 351.310.

⁴ See Memorandum to Barbara E. Tillman, Subject: Fresh Garlic from the People's Republic of China: Accepting Petitioners' submission dated January 23, 2012 as timely (March 7, 2012).

⁵ See Fresh Garlic From the People's Republic of China: Extension of Time Limit for Final Results of the 2009–2010 Administrative Review, 77 FR 17409 (March 26, 2012).

Scope of the Order

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection to that effect.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties are addressed in the Decision Memorandum.⁶ A list of these issues is attached to this notice in the Appendix. The

⁶ See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, "Fresh Garlic from the People's

Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at <http://www.trade.gov/ia/>. The signed Decision Memorandum and electronic versions of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

For the final results, based on analysis of the comments received and our review of the record, the Department has made certain changes to the margin calculations for each respondent. Detailed discussions of these changes can be found in the Decision Memorandum, Golden Bird's Final Calculation Memorandum, and Xinboda's Final Calculation Memorandum.⁷

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single

Republic of China: Issues and Decision Memorandum for the Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order," dated June 04, 2012 (Decision Memorandum).

⁷ See Memorandum to the File regarding "Fresh Garlic from the People's Republic of China: Calculation Memorandum for the Final Results of Antidumping Duty Administrative Review – Hebei Golden Bird Trading Co., Ltd.," dated June 4, 2012 (Golden Bird's Final Calculation Memorandum); see also Memorandum to the File regarding "Fresh Garlic from the People's Republic of China: Calculation Memorandum for the Final Results of Antidumping Duty Administrative Review – Shenzhen Xinboda Industrial Co., Ltd.," dated June 4, 2012 (Xinboda's Final Calculation Memorandum).

rate unless an exporter can demonstrate that it is sufficiently independent so as to be eligible for a separate rate.⁸

In the Preliminary Results, the Department found that Golden Bird, Farmlady, Xinboda, Henan Weite Industrial Co., Ltd., Qingdao Xintianfeng Foods Co., Ltd., Chengwu County Yuanxiang Industry & Commerce Co., Ltd., and Yantai Jinyan Trading Co., Ltd. demonstrated their eligibility for a separate rate.⁹ No party has placed any evidence on the record of this review to contradict that finding. Therefore, we continue to find that these companies are eligible for a separate rate.

The separate rate shall be an amount equal to the weighted average of the calculated weighted-average dumping margins established for mandatory respondents, excluding any zero and de minimis margins, and any margins determined entirely on adverse facts available.¹⁰ In this review, Xinboda and Golden Bird are the two mandatory respondents for which the Department calculated company-specific rates. Using a weighted average of these two company-specific rates to calculate a separate rate would risk disclosure of the mandatory respondents' business proprietary information. Therefore, the Department used a simple average of these two company-specific rates to calculate a separate rate, which is \$0.41 per kilogram.

Final Results of Review

The Department determines that the following dumping margins exist for the period November 1, 2009, through October 31, 2010.

⁸ See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991), as further developed in Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) and 19 CFR 351.107(d).

⁹ See Preliminary Results, 76 FR at 76380-76381.

¹⁰ See section 735(c)(5)(A) of the Tariff Act of 1930, as amended (Act).

Producer/Exporter	Dumping Margins (dollars per kilogram)
Hebei Golden Bird Trading Co., Ltd.	\$0.14/kg
Shenzhen Xinboda Industrial Co., Ltd.	\$0.68/kg
Henan Weite Industrial Co., Ltd.	\$0.41/kg
Jinan Farmlady Trading Co., Ltd.	\$0.41/kg
Qingdao Xintianfeng Foods Co., Ltd.	\$0.41/kg
Chengwu County Yuanxiang Industry & Commerce Co., Ltd.	\$0.41/kg
Yantai Jinyan Trading Co., Ltd.	\$0.41/kg

Disclosure

The Department intends to disclose to parties to the proceeding the calculations performed within five days after the date of publication of final results in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (i.e., per kilogram) amount on each entry of the subject merchandise during the POR. The Department intends to issue appropriate assessment instructions for such producers/exporters directly to CBP 15 days after the date of publication of this notice in the Federal Register.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in these final results of review; (2) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide entity rate of \$4.71 per kilogram; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to an Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of proceeding. Timely written notification of the

return/destruction of APO materials or conversion to judicial protective order is hereby requested.
Failure to comply with the regulations and terms of an APO is a violation which is subject to
sanction.

These final results are issued and published in accordance with sections 751(a)(1) and
777(i)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

June 4, 2012_____
Date

APPENDIX

- Comment 1: Surrogate Country for the Final Results**
- Comment 2: Cold and Controlled Atmosphere Storage Consumption Factors**
- Comment 3: Whether the Department Must Account for Yield Loss and Shrinkage**
- Comment 4: Whether to Use Garlico Instead of Azadpur for the Raw Garlic Input Price**
- Comment 5: Whether Azadpur Prices are the Best Source for Raw Garlic Input Surrogate Values**
- Comment 6: Whether to Continue Using Azadpur Grade SA Price Data**
- Comment 7: Use of Indian Import Statistics for Other Surrogate Values**
- Comment 8: Selection of Surrogate Financial Ratios**
- Comment 9: Adjustments to the Financial Ratios**
- Comment 10: Whether the Department Should Apply Zeroing for the Final Results**
- Comment 11: Selection and Corroboration of the PRC-Wide Entity Rate**
- Comment 12: Review Request Process in Reviews of NME Countries**
- Comment 13: The Department's 15-day Liquidation Instructions Policy**